

**MINUTES OF A MEETING OF
THE LEMON GROVE CITY COUNCIL**

September 19, 2017

The City Council also sits as the Lemon Grove Housing Authority, Lemon Grove Sanitation District Board, Lemon Grove Roadway Lighting District Board, and Lemon Grove Successor Agency

Call to Order

City Councilmembers present:

Mayor Racquel Vasquez, Mayor Pro Tem Jennifer Mendoza, Councilmember David Arambula, and Councilmember Jerry Jones.

City Council Members absent:

Councilmember Matt Mendoza

City Staff present:

City Manager, Lydia Romero; Sheriff's Department Sergeant, Scott Amos; Development Services Director, David De Vries; City Clerk, Susan Garcia; Assistant City Manager/Public Works Director; Mike James, City Attorney, James P. Lough; Finance Manager, Auggie Matt; Fire Chief, Colin Stowell; and Management Analyst, Malik Tamimi.

Pledge of Allegiance

The Pledge of Allegiance was led by Councilmember Arambula.

Presentations

"Lemon Grove History Minute #4"

Mayor Vasquez presented a proclamation of recognition honoring Conrad Lemon Grove Mortuary.

Eric Lund, San Diego East County Chamber of Commerce, provided an update presentation of the East County Homeless Task Force.

Mayor Pro Tem J. Mendoza asked if Mr. Lund's recommendations could be brought back as agenda item.

Public Comment

Helen Ofield read a 100 year old San Diego Union newspaper article regarding the first annual products show in Lemon Grove.

Ukiah Dublinski commented the previous City Council meeting public hearing and asked if could be readdressed.

James Lough stated the public hearing is closed and only next step is to wait year or bring action in Superior Court.

Ben Garcia commented on the previous City Council meeting public hearing.

Cara Anderson commented on the previous City Council meeting public hearing and believes it was based off of misinformation.

Kathleen McLean reported that City sent letters regarding possible dispensary locations were near schools and their research indicates that these locations are not schools.

Contreras (no other name was provided) commented on a recent Sheriff's Department efforts near her neighborhood. She spoke about characteristics of medical marijuana and suggested additional education for the Council, on the topic.

Chris Williams commented on his process with the City and Measure V. He asked if the City Council could rehear his item that was discussed during a public hearing at a previous City Council meeting.

1. Consent Calendar

A. Approval of City Council

August 15, 2017 Regular Meeting

September 5, 2017 Regular Meeting

B. Ratification of Payment Demands

C. Waive Full Text Reading of All Ordinances and Resolutions on the Agenda

D. Amendment No. 1 to the Fiscal Year 2017-2018 City of Lemon Grove

Consolidated Operating and Capital Budget

E. Reject sole bid for Traffic Signal Maintenance, Emergency Repairs, and Related Construction Services

Action: Motion by Mayor Pro Tem J. Mendoza, seconded by Councilmember Arambula, to approve the Consent Calendar passed, by the following vote:

Ayes: Vasquez, J. Mendoza, Arambula, Jones

Absent: M. Mendoza

2. City of Lemon Grove Climate Action Plan

Malik Tamimi explained that Climate Action Plans (CAPs) are comprehensive local planning documents that outline specific activities a local government will undertake to reduce greenhouse gas (GHG) emissions from their community. Major sources of emissions are from transportation, building energy use, solid waste, deforestation and water use.

In 2005, an Executive Order was issued that set two statewide goals for reducing GHG emissions: return to 1990 GHG levels by 2020, and reduce GHG emissions by 80 percent below 1990 levels by 2050. In 2006, Assembly Bill 32 set the 2020 GHG reduction target into law. The California Air Resources Board was directed to prepare a Statewide Scoping Plan to detail how the state would attain the 2020 reduction target.

In 2007, Senate Bill 97 created new requirements for GHG emissions to be considered under the California Environmental Quality Act. The Scoping Plan described the key role that local governments play in reducing GHG emissions and recommended that local CAPs include a reduction target of 15 percent below current levels by 2020.

Through Lemon Grove's participation in the Energy Roadmap Program, the a grant was awarded from the SDG&E Emerging Cities Program to develop a GHG emission inventories and forecast report. The 2015 report presents the GHG emissions for Lemon Grove for the years 2010, 2011, 2012, and 2013, and the likely forecast of emissions in 2020. The inventories and forecast represented in the report are the first comprehensive accounting of Lemon Grove's resource use and associated GHG emissions. The emissions were relatively stable from 2010 to 2013, increasing by less than 2% over the four-year period.

Lemon Grove's emissions are largely from electricity (36%), transportation (28%), and natural gas (22%) sources, with other emissions sources including solid waste (9%), water (4%), and wastewater (1%). Future emissions are expected to increase 6% from 2010 levels by 2020. The proportion of emissions from electricity (38%), solid waste (10%) will increase while the proportion of emissions from transportation will decrease (24%) and natural gas emissions will continue to account for 22%. The Proportion of emissions attributed to water and wastewater will also remain the same at 4% and 1%.

Lydia Romero added that SANDAG awarded the City with a grant that will assist in compliance with the Climate Action Plan requirements.

Allison Wood, SANDAG, reported on current progress in other cities for their Climate Action Plans along with the County of San Diego.

Mayor Pro Tem J. Mendoza recommended the City Council review the Energy Roadmap on SANDAG's website. She asked that staff provide the City Council with other adopted Climate Action Plans, suggested more recycling options, and alternatives for transportation.

Councilmember Arambula suggested that solar panels are included in the Climate Action Plan and that the Citizens Advisory Committee be involved in this process.

Public Speaker(s)

There were no requests from the public to speak.

After the discussion, staff was directed to proceed with the development of Lemon Grove's Climate Action Plan.

3. Public Appeal to Consider Appeal No. AA1-700-0004 Regarding the Denial of Zoning Clearance No. ZC1-700-0016 Continued from August 15, 2017; a Request to Apply for a Conditional Use Permit to Establish a Medical Marijuana Dispensary at 6915 North Avenue in the General Commercial Zone

David De Vries introduced Chance Hawkins, special counsel, and added that Mr. Hawkins will represent staff for this appeal hearing. This item is the continued appeal of a Development Services Director decision to deny a Zoning Clearance Request to Apply for a Conditional Use Permit to Establish a Medical Marijuana Dispensary (MMD) at 6915 North Ave in the General Commercial Zone.

Mr. De Vries explained that the appellant's application was denied because the proposed facility is located within 1,000 feet of three licensed family daycares. The applicant was verbally told that the proposed facility did not meet the separation requirements and the City provided the map to the public prior to accepting applications showing the protected uses would not allow for a dispensary at the subject property. The City's buffer map was not intended to supersede any applicant efforts to determine or investigate protected uses or marijuana dispensary locations that could prevent the siting of a dispensary business.

The exact locations of the daycare facilities were disclosed to the appellant after the appeal application was filed. City staff utilized a measurement tool in the GIS database that gives an exact measurements from property line to property line. Measure V clearly states that measurement is made between the closest property lines.

The State Department of Social Services no longer discloses a public list of state licensed family daycare facilities, in order to protect the privacy rights of the daycare operator's home and to protect the safety of the children. The City was given a list, confidentially, by the State, but did disclose the specific locations of protected uses, due to the denial.

Mr. De Vries provided explanation of photographs in the staff report, which depict the daycare property boundaries and the topography. He added that there is a slope from the Health and Human services Agency property that continues up to the daycare property on Westview Place. There is a fence with barbed wire that runs on top of the slope.

The appellant's attorney, Ms. Gina Austin, has provided two letters in support of the appellant. Ms. Austin states that there are significant natural and constructed barriers to the west of the family daycares on Westview Place. One example is the barbed wire fence and based on GIS research the fence is located entirely on the Westview Place. The daycares are located in a residential zone and it's important to note that barbed wire is prohibited in residential zones. If the City were to receive a complaint regarding barbed wire at the daycare property, they would be in Code Enforcement receiving citations and fines until all of the barbed wire is removed.

During a site visit, the one of the daycare operators confirmed they are a licensed daycare and attested to the other two facilities also being in operation. The operator stated that prior to the barbed wire going up, people would go up and down the slope regularly to avoid going all the way around along Massachusetts Avenue. Ms. Austin's letter, states that that they hired a private investigator, but the investigator contests that there are no children or signs of a daycare present at a facility located at 7103 Westview Place, which is not the address where the daycare operations are located.

Regarding natural and constructed barriers, Measure V states "measurement is made between the closest property lines of the premises in which the regulated uses and protected uses are located." Measure V further states "the measurement of distance between uses will take into account natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access." The dictionary definition of a freeway is "an express highway, especially one with controlled access." Flood control is defined as "the act or technique of controlling river flow with dams, dikes, artificial channels, etc., so as to minimize the occurrence of floods."

Mr. De Vries stated that staff contends that these constructed barriers only include major linear obstructions traversing for miles where pedestrian access is prohibited or severely limited and staff further contends that a minor slope that is accessible to pedestrians and constructed barriers like fences and unpermitted barbed wire are not constructed barriers in accordance with Measure V.

Councilmember Jones asked if the Council has discretion with regards to barriers and natural topographical barriers could be accumulative, could Council consider Broadway and the slope together as access barriers, and could their decision be precedent setting.

James Lough answered that there is discretion because Measure V says "such as". Accumulative barriers could be considered because the ordinance says "and" and does not say "or". The quasi-judicial hearing is not precedent setting, however, if a particular barrier is considered a barrier that could apply again. With regards to constructed barriers there are two examples in the ordinance natural topographical and constructed barriers.

Mayor Vasquez continued the public hearing.

Gina Austin, attorney representing the applicant, stated that there is a scrivener's error in their private investigator's report the correct day care address is 7106 Westview Place not 7103. She added that the investigator's report stated that "No children or signs of a daycare were present."

Ms. Austin stated that the barriers are their main focus and added that during the previous hearing the City Council had not determined a method of measurement for distance. The Development Services Director's decision did not take into account the natural topographical and constructed barriers between the alleged daycare facilities and the proposed MMD location. The City suggests that the licensed daycare facilities are approximately 853 feet from the proposed MMD Location. Staff inaccurately measured the distance between 6915 North Street and 7106 Westview Place in a straight line without consideration of natural topographical barriers or constructed barriers. When appropriately measured around the natural and constructed barriers the distance is over 3,000'.

The plain language of the ordinance does not expressly state or even imply that the distance is to be measured in a straight line. Rather, the plain language is very clear that when there is a barrier the distance shall be measured as the most direct route around the barrier in a manner that establishes direct access. She noted that when traveling, in the most direct route, from 6915 North Avenue towards 7106 Westview Place, the first constructed barrier is existing freeway off ramp that includes six lanes of traffic on Broadway and Federal Avenue with no cross walk. Then there is the steep slope with vegetation along the south and east side of the parking lot of the Family Resource Center. The other barrier is the 6 foot high chain linked fence topped with at least 3 rows of barbed wire. This fencing surrounds the entirety of the north and west sides of 7106 Westview leaving the only access via the south and east sides of the property from Westview Place.

The staff report indicates that City staff contacted the three family daycare home operators via a phone call and written letter and informed them that their locations would be disclosed to the appellant. Noticeably missing from the staff report is confirmation from the alleged daycare operators that childcare is actually occurring at 7106 Westview and/or that children are present.

Stephen George, Landscapes West contractor, stated that the vegetation on the slope is Acacia latifolia and frequently used as a foot traffic barrier and hillside slope retainer throughout San Diego County.

Chris Williams, applicant, stated that he is requesting that the law be followed. He commented on aspects of Measure V and reported that he spoke with the Development Services Director regarding the barbed wire fence along with the slope behind the day care center.

At Mr. Williams request two videos were shown.

Public Speaker(s)

The following spoke in favor of overturning the Development Services Director's denial of Zoning Clearance No. ZC1-700-0016:

Cara Anderson
Benjie Cooper
Mustaf Sufi
Kathleen Mclean
Ukiah Dublinski
Omar Ahmed

David (last name not provided) commented on aspects of Measure V and asked additional environmental and traffic studies could be conducted with regards to possible impact of the dispensary.

Action: Motion by Councilmember Jones, seconded by Mayor Pro Tem J. Mendoza, to close the public hearing passed, by the following vote:

Ayes: Vasquez, J. Mendoza, Arambula, Jones

Absent: M. Mendoza

Councilmember Jones commented on Measure V, accumulative effects of what could be considered as a barrier, and expressed concern that he would not want the Council to be bound in the future to what might be considered a barrier.

Councilmember Arambula asked if accumulative effects of a major thoroughfare, the large parking lot, natural topographical barrier, the slope and vegetation on the slope, continuous fence could be considered. He noted that the Council will be making these decisions on a case by case basis and they need to follow the law.

Councilmember Jones noted that with regards to all of the accumulative factors, the only two with distinction are the major thoroughfare at the freeway with the on and off ramp and the slope.

James Lough stated the findings are important for future applicants and Measure V needs to be followed properly. Typical straight line measurement has been used previously. The natural topographical is the lay of land and could be a finding. The major thoroughfare could be considered constructed barrier. With these two things the slope and Broadway, at this particular location, accumulatively, is what is intended by the ordinance. He stated that a resolution will be on the next City Council Consent Calendar with the findings that will be voted on.

Mayor Pro Tem J. Mendoza stated that after reviewing the map she doesn't think it is possible to cross the 6 lanes of heavy traffic and that it would be similar street running across the freeway. She disclosed that she called Ms. Austin today.

Action: Motion by Councilmember Jones, seconded by Mayor Pro Tem J. Mendoza, to overturn the decision of the Development Services Direct and direct staff to bring a new resolution with the findings discussed passed, by the following vote:

Ayes: Vasquez, J. Mendoza, Arambula, Jones

Absent: M. Mendoza

City Council Oral Comments and Reports on Meetings Attended at the Expense of the City. (GC 53232.3 (d))

Councilmember Jones reported on a recent Metro Wastewater meeting.

Councilmember Arambula attended Heal Zone Resident Leadership meeting. Assemblywoman Weber's birthday celebration.

Mayor Pro Tem J. Mendoza attended two SANDAG Transportation Committee meetings and the Lemon Grove Community Clean-up event.

Mayor Vasquez expressed appreciation to Malik Tamimi for his efforts with the community clean-up event. She presented a proclamation to VFW POST 1512 at their 10th Annual POW/MIA Recognition Day Ceremony. She also attended the Cox "A Salute to Teachers" recognizing the 2018 County Teacher of the Year where Danielle Adams of San Miguel Elementary was a nominee.

City Manager and Department Director Reports

David De Vries reported on the community clean-up event the next event will be on October

Chief Stowell first responder recognition event at the Friday Padres game.

James Lough attended the League of California League of Cities Annual Conference. He noted Gene Gordon recently passed away and reported on his accomplishments along with his many contributions to the legal profession.

Closed Session

Conference with Real Property Negotiators Government Code Section 54956.8
Address: 8084 Lemon Grove Way, Lemon Grove, California
Agency Negotiators: Lydia Romero and Mike Wapner
Negotiating parties: The San Diego Community Land Trust
Under negotiation: Price and Terms
Closed Session Report: No reportable action was taken.

Conference with Real Property Negotiators Government Code Section 54956.8
Address: Property near 3615 Lemon Grove Avenue, remnant parcel
Agency Negotiators: Lydia Romero, Mike James, and Mike Wapner
Negotiating parties: Owen Mossy, Mossy Honda
Under negotiation: Price and Terms
Closed Session Report: No reportable action was taken.

Adjournment

There being no further business the meeting was adjourned at 9:00 p.m.